CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 30 FEBRUARY 21, 1996 NO. 8

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 96–15)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR JANUARY 1996

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: Monday, January 1, and Monday, January 15, 1996.

Greece drachma:

January 1, 1996	$0.004218
January 2, 1996	.004212
January 3, 1996	.004221
January 4, 1996	.004189
January 5, 1996	.004235
January 6, 1996	.004235
January 7, 1996	.004235
January 8, 1996	.004230
January 9, 1996	.004243
January 10, 1996	.004244
January 11, 1996	.004243
January 12, 1996	.004217
January 13, 1996	.004217
January 14, 1996	.004217
January 15, 1996	.004217
January 16, 1996	.004175
January 17, 1996	.004157
January 18, 1996	.004137
January 19, 1996	.004105
January 20, 1996	.004105
January 21, 1996	.004105
January 22, 1996	.004110
January 23, 1996	.004093
January 24, 1996	.004078
January 25, 1996	.004074
January 26, 1996	.004050
January 27, 1996	.004050
January 28, 1996	.004050
January 29, 1996	.004063
January 30, 1996	.004049
January 31, 1996	.004067

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for January 1996 (continued):

South Korea won:	
January 1, 1996	$0.001289
January 2, 1996	.001289
January 3, 1996	.001285
January 4, 1996	.001270
January 5, 1996	.001269
January 6, 1996	.001269
January 7, 1996	.001269
January 8, 1996	.001269
January 9, 1996	.001270
January 10, 1996	.001269
January 11, 1996	.001262
January 12, 1996	.001265
January 13, 1996	.001265
January 14, 1996	.001265
January 15, 1996	.001265
January 16, 1996	.001262
January 17, 1996	.001263
January 18, 1996	.001266
January 19, 1996	.001266
January 20, 1996	.001266
January 21, 1996	.001266
January 22, 1996	.001267
January 23, 1996	.001270
January 24, 1996	.001270
January 25, 1996	.001272
January 26, 1996	.001273
January 27, 1996	.001273
January 28, 1996	.001273
January 29, 1996	.001277
January 30, 1996	.001274
January 31, 1996	.001273
Taiwan N.T. dollar:	
January 1, 1996	$0.036643
January 2, 1996	.036670
January 3, 1996	.036670
January 4, 1996	.036590
January 5, 1996	.036603
January 6, 1996	.036603
January 7, 1996	.036603
January 8, 1996	.036523
January 9, 1996	.036510
January 10, 1996	.036510
January 11, 1996	.036483
January 12, 1996	.036523
January 13, 1996	.036523
January 14, 1996	.036523
January 15, 1996	.036523
January 16, 1996	.036496
January 17, 1996	.036456
January 18, 1996	.036470
January 19, 1996	.036456
January 20, 1996	.036456
January 21, 1996	.036456
January 22, 1996	.036443
January 23, 1996	.036443

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for January 1996 (continued):

Taiwan N.T. dollar (continued):

January 24, 1996	$0.036417
January 25, 1996	.036417
January 26, 1996	.036417
January 27, 1996	.036417
January 28, 1996	.036417
January 29, 1996	.036377
January 30, 1996	.036390
January 31, 1996	.036403

Dated: February 1, 1996.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 96–16)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JANUARY 1996

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 96–8 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: Monday, January 1, and Monday, January 15, 1996.

Finland markka:

January 25, 1996	$0.219010
January 26, 1996	.219394
January 27, 1996	.219394
January 28, 1996	.219394
January 30, 1996	.219058

Sweden krona:

January 26, 1996	$0.143349
January 27, 1996	.143349
January 28, 1996	.143349
January 29, 1996	.143205

Dated: February 1, 1996

FRANK CANTONE,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, February 7, 1996.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF PLASTIC BATTERY HOUSINGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the tariff classification of plastic battery housings. These are rectangular shaped articles that house six "AA" alkaline batteries. Notice of the proposed modification was published on January 3, 1996, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after April 22, 1996.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 3, 1996, Customs published a notice in the CUSTOMS BULLETIN, Volume 30, Number 1, proposing to revoke *NY* 810315, which classified the plastic battery housings as parts of primary cells and primary batteries, in subheading 8506.90.00, Harmonized Tariff Schedule

of the United States (HTSUS). No comments were received in response to this notice. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking *NY* 810315 to reflect the proper classification of the battery housings in subheading 8536.90.00, HTSUS, a provision for other electrical apparatus for making connections to or in electrical circuits. The rate of duty under this provision is 4.8 percent percent *ad valorem*. *HQ* 958380 revoking *NY* 810315 is set forth as the Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: February 5, 1996.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 5, 1996.

CLA–2 RR:TC:MM 958380 JAS
Category: Classification
Tariff No. 8536.90.00

MR. RICHARD MILLER
RECOTON CORPORATION
2950 Lake Emma Road
Lake Mary, FL 32746

Re: *NY* 810315 Revoked; plastic battery housing for alkaline batteries; emergency power source for cellular telephones; plastic housings with positive and negative contacts; electrical apparatus for making connections to or in electrical circuits; Section XVI, Note 2.

DEAR MR. MILLER:

In *NY* 810315, dated May 17, 1995, the Area Director of Customs, New York Seaport, advised you that plastic battery housings for alkaline batteries were classifiable in subheading 8508.90.00, Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* 810315 was published on January 3, 1996, in the CUSTOMS BULLETIN, Volume 30, Number 1. No comments were received in response to this notice.

Facts:

The plastic battery housings were described in *NY* 810315 as a cellular telephone emergency power source. They are rectangular shaped plastic housings for six "AA" alkaline bat-

teries. The bottom of the housing contains one positive and one negative contact. The metal contacts make connections in an electrical circuit. These housings with batteries become battery cartridges.

The provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
8536.90.00	Other apparatus * * * 4.8 percent
* * * * * * *	
8506	Primary cells and primary batteries; parts thereof:
8506.90.00	Parts * * * 4.8 percent

Issue:

Whether plastic battery housings with positive and negative contacts are goods of heading 8536.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Subject to certain exceptions that are not relevant here, goods that are identifiable as parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2. **Nidec Corporation v. United States,** 861 F. Supp. 136, *affd.* 68 F. 3d 1333 (1995). Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. *See* Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. *See* Note 2(b).

Relevant **ENs** at p. 1390 under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS** state this apparatus of heading 85.36 is used to connect together the various parts of an electric circuit. It includes plugs, sockets and other contacts for connecting a movable lead or apparatus to an installation which is usually fixed, as well as other connectors, terminals, terminal strips, etc. This latter group includes small squares of insulating material fitted with electrical conductors (dominoes), and terminals which are metal parts intended for the reception of conductors. In this case, the positive and negative contacts are passive elements which, together with the batteries which are active elements, are interconnecting parts of a circuit that permits power from the batteries to flow to the cellular telephone. The plastic battery housings, as described, meet the description in the cited **ENs** and are goods included in heading 8536 for purposes of Section XVI, Note 2(a).

Holding:

Under the authority of GRI 1, the plastic battery housings with positive and negative contacts, are provided for in heading 8536. They are classifiable in subheading 8536.90.00, HTSUS.

NY 810315, May 17, 1995, is hereby revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF HEAT RECOVERY VENTILATORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of he North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings relating to the tariff classification of heat recovery ventilators. This is residential apparatus that evacuates stale air from a room and replaces it with an equal volume of fresh air. Notice of the proposed modification was published on January 3, 1996, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after April 22, 1996.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 3,1996, Customs published a notice in the CUSTOMS BULLETIN, Volume 30, Number 1, proposing to revoke *NY* 881844, dated February 4, 1993, and *NY* 882222, dated February 24, 1992, which classified heat recovery ventilators as air conditioning machines, in subheading 8415.83.00, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking *NY* 881844 and *NY* 882222 to reflect the proper classification of heat recovery ventilators in subheading 8479.89.65, HTSUS, a provision for other machines having individual functions, not specified or included elsewhere in [chapter 84]. The rate of duty under this provision is 3.9 percent *ad valorem*. *HQ* 958729 revoking *NY* 882222 is set forth as Attachment "A" to this document, and *HQ* 958730 revoking *NY* 881844 is set forth as Attachment "B" to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: February 5, 1996.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 5, 1996.

CLA-2 RR:TC:MM 958729 JAS
Category: Classification
Tariff No. 8479.89.65

MR. WILLIAM H. STEERE
CARRIER CORPORATION
P.O. Box 4800
Syracuse, NY 13221

Re: *NY* 882222 Revoked; heat recovery ventilator, apparatus for replacing stale air, heat exchanger, motor-driven fan or blower and dehumidistat; air conditioning machine, Heading 8415; machine having individual function not specified or included elsewhere.

DEAR MR. STEERE:

In *NY* 882222, dated February 24, 1992, the Area Director of Customs, New York Seaport, advised you that three heat recovery ventilator models were classifiable as air conditioning machines, in subheading 8415.83.00, Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* 882222 was published on January 3, 1996, in the CUSTOMS BULLETIN, Volume 30, Number 1. No comments were received in response to this notice.

Facts:

As described in *NY* 888222, the heat recovery ventilator models VA3A, VB5A and VC5A, consist of a polypropylene heat recovery core or heat exchanger that incorporates 2 motor-driven fans, a filter, and a dehumidistat control that allows the user to select the relative humidity level. This is residential apparatus that functions in connection with existing heating or air conditioning ductwork to evacuate stale air from a room and replace it with the same volume of fresh air. Heat from the exiting air is transferred to the heat exchanger. Simultaneously, fresh air drawn in from the outside passes through the filter to remove large airborne particles, then over the heat exchanger where it absorbs the same heat.

The provisions under consideration are as follows:

8414		Air or vacuum pumps, air or other gas compressors and fans; Fans:
8414.59		Other:
8414.59.60		Other * * *4.2 percent
*	* * * * * * *	

8415	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof:
	Other, except parts:
8416.53.00	Not incorporating a refrigerating unit * * * 2 percent
*	* * * * * * *
8421	* * *; filtering or purifying machinery and apparatus for liquids or gases; parts thereof:
	Filtering and purifying machinery and apparatus for gases:
8421.39	Other:
8421.39.80	Other * * * 3.1 percent
*	* * * * * * *
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 84]; parts thereof:
	Other machines and mechanical appliances:
8479.89	Other:
	Electromechanical appliances with self-contained electric motor:
8479.89.65	Other * * * 3.9 percent

Issue:

Whether heat recovery ventilators are air conditioning machines of heading 8415; whether they are provided for more specifically in any other heading of chapter 84 or 85.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant **ENs** at p. 1163 state that fans of heading 84.14, whether or not fitted with motors, are designed either for delivering large volumes of air or other gases at relatively low temperatures or merely for creating a movement of surrounding air. The heading, however, excludes fans fitted with elements additional to their motors or housing (such as large dust separating cones, filters, cooling or heating elements and heat exchangers) if such elements give them the characteristics of more complex machines of other headings. These notes exclude the subject heat recovery ventilators.

Other **ENs** at pp. 1164 and 1165 state that heading 84.15 covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. Machines of heading 84.15 must be equipped with a motor-driven fan or blower, and change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air, these elements being presented together. The machines in issue do not change the temperature in a room. The heat exchanger maintains existing room temperature while the air is being changed. The temperature of air entering the room may initially be lower until the heat is transferred, but this is incidental. The heat recovery ventilators are not air conditioning machines of heading 8415.

ENs at pp. 1181 and 1182 state that heading 84.21 covers filters and purifiers of all types. Filtering and purifying machinery for gases separate solid or liquid particles from gases, either to recover products of value, or to eliminate harmful materials. The heat recovery ventilators contain a filter but they are not principally used to filter or purify. This precludes heading 84.21 from consideration.

Finally, **ENs** at p. 1314 state that machines and mechanical appliances of heading 84.79 are those having individual functions which are not covered more specifically by any other heading in the HTSUS, and which cannot be classified in any other particular heading of

the HTSUS since no other heading covers it by reference to its method of functioning, description or type, and no other heading covers it by its reference to its use or to the industry in which it is employed, or because it is a general purpose machine. The best recovery ventilators in issue meet the description of machines of heading 84.79.

Holding:

The heat recovery ventilator models VA3A, VB5A and VC5A are provided for in heading 8479. They are classifiable in subheading 8479.89.65, HTSUS.

NY 882222, dated February 24, 1992, is hereby revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 5, 1996.

CLA-2 RR:TC:MM 958730 JAB
Category: Classification
Tariff No. 8479.89.65

MR. ED BAKER
A.N. DERINGER, INC.
30 West Service Road
Champlain, NY 12919-9703

Re: *NY* 881844 Revoked; heat recovery ventilator, apparatus for replacing stale air, heat exchanger, motor-driven fan or blower and dehumidistat; air conditioning machine, Heading 8415; machine having individual function not specified or included elsewhere.

DEAR MR. BAKER:

In *NY* 881844, dated February 4, 1993, the Area Director of Customs, New York Seaport, responded to your inquiry of January 7, 1993, on behalf of **Venmar Ventilation, Inc.**, and advised you that three models of the Flair Heat Recovery Ventilator were classifiable as air conditioning machines, in subheading 8415.83.00, Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* 881844 was published on January 3, 1996, in the CUSTOMS BULLETIN, Volume 30, Number 1. No comments were received in response to this notice.

Facts:

As described in *NY* 881844, the Flair Heat Recovery Ventilator models 3055, 5585 and 85115, consist of a polypropylene heat recovery core or heat exchanger that incorporates 2 motor-driven fans, a filter, and a dehumidistat control that allows the user to select the relative humidity level. This is residential apparatus that functions in connection with existing heating or air conditioning ductwork to evacuate stale air from a room and replace it with the same volume of fresh air. Heat from the exiting air is transferred to the heat exchanger. Simultaneously, fresh air drawn in from the outside passes through the filter to remove large airborne particles, then over the heat exchanger where it absorbs the same heat.

The provisions under consideration are as follows:

8414	Air or vacuum pumps, air or other gas compressors and fans; * * *:
	Fans:
8414.59	Other:
8414.59.60	Other * * * 4.2 percent
*	* * * * * *
8415	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof:
	Other, except parts:
8415.83.00	Not incorporating a refrigerating unit * * * 2 percent
*	* * * * * *
8421	* * *; filtering or purifying machinery and apparatus for liquids or gases; parts thereof:
	Filtering and purifying machinery and apparatus for gases:
8421.39	Other:
8421.39.80	Other * * * 3.1 percent
*	* * * * * * *
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 84]; parts thereof:
	Other machines and mechanical appliances:
8479.89	Other:
	Electromechanical appliances with self contained Electric motor:
8479.89.65	Other * * * 3.9 percent

Issue:

Whether heat recovery ventilators are air conditioning machines of heading 8415; whether they are provided for more specifically in any other heading of chapter 84 or 85.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant **ENs** at p. 1163 state that fans of heading 84.14, whether or not fitted with motors, are designed either for delivering large volumes of air or other gases at relatively low temperatures or merely for creating a movement of surrounding air. The heading, however, excludes fans fitted with elements additional to their motors or housing (such as large dust separating cones, filters, cooling or heating elements and heat exchangers) if such elements give them the characteristics of more complex machines of other headings. These notes exclude the subject heat recovery ventilators.

Other **ENs** at pp. 1164 and 1165 state that heading 84.15 covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. Machines of heading 84.15 must be equipped with a motor-driven fan or blower, and change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air, these elements being presented together. The machines in issue do not change the temperature in a room. The heat exchanger maintains existing room temperature while the air is being changed. The temperature of air entering the room may initially be lower until the heat is transferred, but this is incidental. The heat recovery ventilators are not air conditioning machines of heading 8415.

ENs at pp. 1181 and 1182 state that heading 84.21 covers filters and purifiers of all types. Filtering and purifying machinery for gases separate solid or liquid particles from gases,

either to recover products of value, or to eliminate harmful materials. The heat recovery ventilators contain a filter but they are not principally used to filter or purify. This precludes heading 84.21 from consideration.

Finally, **ENs** at p. 1314 state that machines and mechanical appliances of heading 84.79 are those having individual functions which are rot covered more specifically by any other heading in the HTSUS, and which cannot be classified in any other particular heading of the HTSUS since no other heading covers it by reference to its method of functioning, description or type, and no other heading covers it by its reference to its use or to the industry in which it is employed, or because it is a general purpose machine. The heat recovery ventilators in issue meet the description of machines of heading 84.79.

Holding:

The Flair heat recovery ventilator models 3055, 5585 and 85115 are provided for in heading 8479. They are classifiable in subheading 8479.89.65, HTSUS.

NY 881844, dated February 4, 1993, is hereby revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF ALUMINUM HALL STRUCTURAL UNITS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of "Aluminum Hall" structural units under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on January 3, 1996, in the CUSTOMS BULLETIN, Volume 30, Number 1.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Altneu, Attorney-Advisor, Tariff Classification Appeals Division (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 3, 1998, Customs published a notice in the CUSTOMS BULLETIN, Volume 30, Number 1, proposing to revoke New York Ruling Let-

ter (NY) 811376, issued on June 27, 1995, by the Area Director of Customs, New York Seaport, concerning the tariff classification of "Aluminum Hall" structural units. No comments were received in response to the notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY 811376 to reflect the proper classification of "Aluminum Hall" structural units under subheading 9406.00.80, HTSUS, which provides for other prefabricated buildings. HQ 958745 revoking NY 811376 is set forth as the "Attachment" to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: February 6, 1996.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 6, 1996.
CLA–2 RR:TC:MM 958745 RFA
Category: Classification
Tariff No. 9406.00.80

MR. CHARLES BALLANTYNE
UNIVERSAL FABRIC STRUCTURES
4259 East Landis Street
Coopersburg, PA 18036

Re: "Aluminum Hall" coated fabric/aluminum structures; fabricated buildings; tents; Headings 6306 and 9406; Legal Note 4 to Chapter 94; Legal Note 1(h) to section XI; Headings 6306, 7610; 9406; EN 63.06,94.06; NY 897884; NY 811376, revoked.

DEAR MR. BALLANTYNE:

This is in reference to NY 811376 issued to you on June 27, 1995, by the Area Director of Customs, New York Seaport, concerning the tariff classification of an "Aluminum Hall" under the Harmonized Tariff Schedule of the United States (HTSUS). In the course of ruling on similar merchandise, we have determined that NY 811376 is incorrect. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (1993), notice of the proposed revocation of NY 811376 was published on January 3, 1996, in the CUSTOMS BULLETIN, Volume 30, Number 1. No comments were received in response to the notice.

Facts:

The provided literature describes the subject merchandise, "Aluminum Hall" structures, as pre-engineered, freespan, modular fabric tension structures that are designed to

withstand high winds, shed snow, and provide durable, safe, and economical temporary shelter where speed of installation or relocation is essential. The structural frame (which accounts for approximately 60 percent of the total cost) is composed of extruded aluminum box beams with an integrated channel system. The roofing membrane is composed of a polyester fabric that is visibly coated on both sides with polyvinyl chloride (PVC). The roofing membrane is inserted In the integrated channel system and tensioned between each frame. The sidewalls of the structures are typically manufactured of rigid panels (said to be composed of fiberglass) that measure approximately 3 feet in width by 9 feet in height.

The combined components form units measuring 16 feet in length and from 16 to 132 feet in width, depending upon need. Units may be joined together to form structures of whatever size desired. The structures are freestanding (without internal columns or ropes) and capable of supporting heavy appliances (e.g., lighting, sprinklers, etc.). A sample swatch of the PVC-coated polyester roofing membrane, and sample sections of the aluminum frame and sidewall panel were submitted. The panel sample is actually composed of fiberglass-reinforced plastic resin that is molded to shape.

Issue:

Whether the merchandise is classifiable under heading 7610, as aluminum structures, or under heading 9406. HTSUS, as prefabricated buildings, or under heading 6306, HTSUS, as tents?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

In NY 811376, issued on June 27, 1995 by the Area Director of Customs, New York Seaport, "Aluminum Hall" structural units were classified under subheading 7610.90.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: "[a]luminum structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); alumInum plates, rods, profiles, tubes and the like, prepared for use in structures: [o]ther * * *."

However, to be classified under heading 7610, HTSUS, an article cannot be classifiable under heading 9406, HTSUS, as a prefabricated building. Legal Note 4 to chapter 94, HTSUS, states that: "For the purposes of heading 9406, the expression *"prefabricated buildings"* means buildings which are finished in the factory or put up as elements, entered together, to be assembled on site, such as housing or worksite accommodation, offices, schools, shops, sheds, garages or similar buildings."

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 94.06, at page 1582, states, in pertinent part, that:

> This heading covers prefabricated buildings, also known as "industrialised buildings", of **all materials.** (emphasis added)
>
> These buildings, which can be designed for a variety of uses, such as housing, worksite accommodation, offices, schools, shops, sheds, garages and greenhouses, are generally presented in the form of:
>
> – complete buildings, fully assembled, ready for use;
> – complete buildings, unassembled;
> – incomplete buildings, whether or not assembled, having the essential character of prefabricated buildings.

In NY 897884, issued on June 8, 1994, Customs classified a filtration center/pool shed and an octagon shaped pavilion as prefabricated buildings in subheading 9406.00.80, HTSUS. The shed classified in that ruling was described as a small building equipped with a door, a lock, windows, and four walls and a roof made of hard durable PVC. The pavilion was described as having a roof made completely of PVC material and the walls and door consisting of PVC frames with screen.

We believe that the "Aluminum Hall" meets the definition of "prefabricated buildings". This provision allows for structures made of any material to be classified here so long as it can be used as one of the types of buildings listed in Legal Note 4 to chapter 94, HTSUS, or

in EN 94.06. According to the provided literature, the "Aluminum Hall" are pre-engineered, freespan, modular fabric tension structures that are designed to withstand high winds, shed snow, and provide durable, safe, and economical temporary shelter where speed of installation or relocation is essential. The fact that the roof of the subject merchandise is not made of a hard substance is not relevant for classification purposes so long as it is capable of providing cover from the elements of the weather. Because the "Aluminum Hall" meets the definition of "prefabricated buildings", we find it is precluded from classIfication under heading 7610, HTSUS, and is properly classifiable in heading 9406, HTSUS. *See* NYRL 897884.

Because the "Aluminum Hall" uses a type of fabric in its roof or walls, classification under heading 6306, HTSUS, which covers tents, was considered. The EN to heading 6306, page 867, indicates that tents are shelters of fabric (usually with a roof and sides or walls that permit the formation of an enclosure) and that the heading covers tents of various sizes, shapes, and uses, whether or not coated or laminated, and whether or not presented with poles, pegs, ropes, or other accessories. Chapter 63 falls within section XI, HTSUS, which covers textiles and textile articles. Legal Note 1(h) to section XI, HTSUS, states that "This section does not cover: Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39." Because the roofing membrane of the "Aluminum Hall" structures is composed of polyester fabric that is visibly coated on both sides with PVC, a plastic classifiable in chapter 39, HTSUS, the structures are excluded from heading 6306, HTSUS, and are not classifiable as tents.

Holding:

The articles identified as "Aluminum Hall" structures are properly classified in subheading 9406.00.80, HTSUS, which provides for: "Prefabricated buildings: [o]ther * * *." Goods classifiable under this provision have a general, column one rate of duty of 5.7 percent *ad valorem*.

Effect on Other Rulings:

NY 811376, issued on June 27, 1995, is revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) doss not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg
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Evan J. Wallach

Senior Judges

James L. Watson

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Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 96–26)

INA WALZLAGER SCHAEFFLER KG AND INA BEARING CO., INC., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND TORRINGTON CO., FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 93–08–00495

Plaintiffs move this Court for judgment upon the agency record pursuant to Rule 56.2 of this Court challenging certain aspects of the final determination by the United States Department of Commerce, International Trade Administration ("Commerce"), entitled *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order ("Final Results")*, 58 Fed. Reg. 39,729 (July 26, 1993). Plaintiffs contest Commerce's (1) inclusion of plaintiffs' antifriction bearings having a length-to-diameter ratio of less than 4 to 1 within the scope of the antidumping duty order on cylindrical roller bearings from Germany, and (2) treatment of below-cost sales made only in one and two months as sales occurring over an extended period of time.

Held: Antifriction bearings having a length-to-diameter ratio of less than 4 to 1 constitute cylindrical roller bearings within the scope of the relevant antidumping duty order. In addition, in certain contexts, Commerce's exception to the three-month rule by which below-cost sales made in only one and two months, respectively, constitute sales made over an "extended period of time" pursuant to 19 U.S.C. § 1677b(b) (1994) is reasonable.

[Plaintiffs' motion denied; case dismissed.]

(Dated January 29, 1996)

Arent Fox Kintner Plotkin & Kahn (Stephen L. Gibson and *Peter L. Sultan)* for plaintiffs.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Jeffrey M. Telep),* of counsel: David Ross, Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Stewart and Stewart (Terence P. Stewart, Wesley K. Caine, William A. Fennel, Geert De Prest, and *Myron A. Brilliant)* for defendant-intervenor, The Torrington Company.

Frederick L. Ikenson, P.C. (Frederick L. Ikenson, Larry Hampel and *Joseph A. Perna, V)* for defendant-intervenor, Federal-Mogul Corporation.

OPINION

TSOUCALAS, *Judge:* Plaintiffs, INA Walzlager Schaeffler KG, a German exporter of antifriction bearings ("AFBs"), and INA Bearing Company, Inc., a United States importer of AFBs from Germany (collectively

"INA"), move this Court for judgment upon the agency record pursuant to Rule 56.2 of this Court challenging certain aspects of the final determination by the United States Department of Commerce, International Trade Administration ("Commerce"), entitled *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order ("Final Results")*, 58 Fed. Reg. 39,729 (July 26, 1993), as amended, *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 58 Fed. Reg. 42,288 (Aug. 9, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 58 Fed. Reg. 51,055 (Sept. 30, 1993); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 59 Fed. Reg. 9,469 (Feb. 28, 1994). INA contends that Commerce (1) improperly included plaintiffs' AFBs having a length-to-diameter ratio of less than 4 to 1 within the scope of the antidumping duty order on cylindrical roller bearings ("CRBs") entitled *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings and Parts Thereof From the Federal Republic of Germany*, 54 Fed. Reg. 20,900 (May 15, 1989) subjecting them to this review, and (2) erroneously treated below-cost sales made only in one and two months, respectively, as sales occurring over an extended period of time.

On August 23, 1993, INA commenced this action. On September 27, 1993, the Court granted The Torrington Company's ("Torrington") motion to intervene in opposition to INA's challenge. On September 30, 1993, the Federal-Mogul Corporation also intervened to oppose INA's challenge.

Standard of Review

The Court must uphold Commerce's final determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1988). Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). "It is not within the Court's domain either to weigh the adequate quality or quantity of the evidence for sufficiency or to reject a finding on grounds of a differing interpretation of the record." *Timken Co. v. United States*, 12 CIT 955, 962, 699 F. Supp. 300, 306 (1988), *aff'd*, 894 F.2d 385 (Fed. Cir. 1990).

DISCUSSION

1. *4 to 1 Roller Length-to-Diameter Ratio Test:*

INA first argues that Commerce unlawfully applied the "4 to 1" length-to-diameter ratio test to distinguish cylindrical roller bearings and needle roller bearings ("NRBs") in defining the scope of bearings subject to the antidumping duty order on Germany-origin antifriction bearings and this third administrative review. *Complaint* at ¶ 6. According to INA, Commerce's application of the 4 to 1 test unlawfully expands the scope of the relevant antidumping duty order. *Id.* at ¶¶ 6, 8.

On December 23, 1991, in response to a request by FAG Kugelfischer Georg Schaefer KGaA for a scope ruling, Commerce held that the 4 to 1 test is applicable for distinguishing CRBs and NRBs. *See Letter to All Interested Parties* from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, P.R. General Issues, Document No. 11. On September 2, 1992, Commerce informed INA that this standard is applicable in all circumstances for distinguishing between NRBs and CRBs. *Id.*

INA challenged Commerce's June 1, 1993 scope ruling in *INA Walzlager Schaeffler KG and INA Bearing Company, Inc. v. United States,* Court No. 93–06–00352. However, in that case, the Court upheld Commerce's classification of bearings with a length-to-diameter ratio of less than 4 to 1 as cylindrical roller bearings within the scope of the relevant antidumping duty order on CRBS. *INA Walzlager Schaeffler KG v. United States,* 20 CIT ___, ___, Slip Opinion 96–23 at 6–9 (Jan. 19, 1996) (citing *Koyo Seiko Co. v. United States,* 17 CIT 1076, 834 F. Supp. 1401 (1993), *aff'd per curiam,* 31 F.3d 1177 (Fed. Cir. 1994). *See also NTN Bearing Corp. of Am. v. United States,* 19 CIT ___, ___, Slip Op. 95–165 at 42 (Oct. 2, 1995). Accordingly, the Court upholds Commerce's determination that INA's antifriction bearings having a length-to-diameter ratio of less than 4 to 1 are cylindrical roller bearings within the scope of the relevant antidumping duty order on CRBs from Germany and are subject to this administrative review.

2. *"Extended Period of Time" Rule for Below-Cost Sales:*

INA also takes issue with Commerce's treatment of sales below cost in fewer than three months as sales made over "an extended period of time" within the meaning of Section 773b of the Tariff Act of 1930 (the "Act"), as amended, 19 U.S.C. § 1677b(b) (1994).[1] *Memorandum of Points and Authorities in Support of Plaintiffs' Rule 56.2 Motion for Judgment on the Agency Record ("Plaintiffs' Brief"),* at 9–11. INA argues that Commerce unlawfully made an exception in its computer program to the three month minimum period for determining whether sales at less than cost of production ("COP") were made over an extended period of time. *Plaintiffs' Brief* at 9–11. According to INA, language in the computer program cannot override the published deter-

[1] In determining foreign market value, Commerce may disregard sales which were made at prices which represent less than the cost of producing the merchandise in question where those sales "(A) have been made within an extended period of time in substantial quantities, and (B) were not at prices which permit recovery of all costs within a reasonable period of time." 19 U.S.C. § 1677b(b)(1).

mination of Commerce that "extended period of time" means at least three months out of the review period. *Id.* at 9–10.

In the Final Results, Commerce stated:

> Section 773(b)(1) of the Tariff Act [19 U.S.C. § 1677b(b)(1)] is designed to ensure that below-cost sales are not disregarded if these sales occurred over a short period of time or resulted from normal business practices, such as selling obsolete or end-of-year merchandise at below-cost prices. Below-cost sales in at least three months out of the review period is a reasonable indication that sales below COP are not random, accidental, or sporadic.

Final Results, 58 Fed. Reg. at 39,751. The Final Results briefly discussed the rule, not in response to any allegation that Commerce's treatment of sales in fewer than three months was improper but in response to Torrington's claim that the rule should not be applied in certain situations. 58 Fed. Reg. at 39,730. Commerce did not state that it was abandoning the three-month rule. *Id.*

This Court has previously upheld Commerce's definition of "an extended period of time" with regard to below-cost sales as consisting of three months. *NTN Bearing Corp. of Am. v. United States* 19 CIT ____, ____, 881 F. Supp. 595, 602 (1995); *NTN Bearing Corp. of Am. v. United States,* 18 CIT ____, ____, 881 F. Supp. 584, 592 (1994); *NTN Bearing Corp. of Am. v. United States,* 18 CIT ____, ____, 858 F. Supp. 215, 222 (1994). Because 19 U.S.C. § 1677b(b) does not specify what constitutes "an extended period of time," the Court has stated that Congress "has left it up to Commerce to determine what constitutes an extended period of time within the context of a particular proceeding." *NTN Bearing Corp.,* 19 CIT at ____, 881 F. Supp. at 602. Hence, the Court is unmoved by INA's argument. If Commerce's interpretation is reasonable, it must be sustained. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–44 (1984).

Commerce has made an exception to the three-month rule in cases where particular models were sold during the period of review ("POR"). For example, in the first administrative review, Commerce noted:

> We made an exception to this threshold requirement when a particular model was sold in less than three months during the POR. In such cases, where sales below cost occurred in each of the months in which such models had been sold, we concluded that these sales of particular models had been made below cost over an extended period of time.

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 Fed. Reg. 31,692, 31,693 (July 11, 1991). Commerce has explained that this exception addresses a shortcoming in the three-month rule, stating:

> [T]he use of only a three month time measurement is incomplete since it excludes models that were sold in only one or two months of the review period. In cases where a model was sold in only one or

> two months, we determined that below-cost sales took place over an extended period of time if the below-cost sales occurred in one or two months respectively. While this test for models sold in two months or less of the review period ensures that an extended period of time test is applied to all sales, it does not penalize the respondent for random, accidental, or sporadic sales below COP.

Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, From Japan; Final Results of Antidumping Duty Administrative Review, 57 Fed. Reg. 4,960, 4,965 (Feb. 11, 1992) (Comment 10).[2]

The legislative history of 19 U.S.C. § 1677b(b) indicates that Congress implemented the sales below-cost provision because of a concern that, "[i]n the absence of such a provision, sales made to the United States at less than cost of production could escape the purview of the act if sales in the home market * * * are also made at prices which fail to meet the cost of production by an equal or greater amount." H.R. Rep. No. 571, 93rd Cong., 1st Sess. 71 (1973). *See also* S. Rep. No. 1298, 93rd Cong., 2d Sess. 173 (1974), *reprinted in* 1974 U.S.C.C.A.N. 7186, 7310. The Court believes that Commerce's exception to the three-month rule in the present case implements Congressional intent with regard to bearings sold in fewer than three months. Moreover, the Court agrees with Commerce that "[i]f one were to accept INA's definition of the term [extended period of time], a party could make a massive amount of below-cost sales during a two month period each year, thereby dramatically skewing its margins, and Commerce would be helpless to disregard such sales." *Defendant's Memorandum in Opposition to the Motion of INA Walzlager Schaeffler KG and INA Bearing Co., Inc. for Judgment Upon the Agency Record* at 11 n.6. As Commerce's exception to the three month rule has a reasonable basis, it is entitled to deference.

In sum, Commerce's interpretation of "extended period of time," in this particular proceeding, constituted a reasonable exercise of discretion in determining when to disregard below-cost sales pursuant to 19 U.S.C. § 1677b(b).

CONCLUSION

To recapitulate, Commerce's 4 to 1 test for distinguishing cylindrical roller bearings and needle roller bearings has been judicially approved. In addition, Commerce exercised its reasonable discretion in invoking the exception to the three month rule in the context of below-cost sales in the proceeding at bar. Therefore, the Court denies plaintiffs' motion for judgment on the agency record. Judgment is rendered in favor of defendant and this case is dismissed.

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[2] Commerce further explained its rationale for this exception as follows:

> Occasionally, sales occur in less than three months of an investigation or review. This is not an expected normal pattern, but an exception from the pattern of sales for which the three month guideline was developed. If three months were defined as the extended period of time when such a pattern occurred, sales below cost would never be disregarded. This result does not reflect Congressional intent, unless the goods were obsolete or end of model year. Therefore, when we do find that all sales only occur in one or two months, the extended period will be the months in which sales occur. Sales below cost will then be disregarded when they occur in each month for which sales exist.

Import Administration Policy Bulletin No. 94.3 (March 25, 1994), *Disregarding Sales Below Cost-Extended Period of Time* at 3. *See also Color Television Receivers From the Republic of Korea; Final Results of Administrative Review of Antidumping Duty Order*, 58 Fed. Reg. 50,333, 50,338 (Sept. 27, 1993) (Comment 5).

(Slip Op. 96–27)

UNITED STEEL WORKERS OF AMERICA, LOCALS 2391 AND 3225, PLAINTIFFS *v.* U.S. SECRETARY OF LABOR, DEFENDANT

Court No. 94–02–00125

(Dated January 29, 1996)

ORDER

MUSGRAVE, *Judge:* Upon consideration of Plaintiffs' consent motion requesting the Court to sustain the Secretary of Labor's Revised Determination on Reconsideration, dated December 15, 1995, and dismiss this action, it is hereby

ORDERED that the Secretary of Labor's Revised Determination on Reconsideration is sustained in its entirety, and it is further

ORDERED that this action is dismissed.

(Slip Op 96–28)

CERAMICA REGIOMONTANTA, S.A., ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 89–06–00323

(Dated January 31, 1996)

ORDER

MUSGRAVE, *Judge:* Upon consideration of the appellate court's decision in *Ceramica Regiomontanta, S.A. v. United States,* 64 F.3d 1579 (Fed. Cir. 1995), and the defendant's consent motion, it is hereby

ORDERED that the U.S. Department of Commerce revoke the countervailing duty order on ceramic tile from Mexico, published on May 12, 1982 at 47 Fed. Reg. 20012, effective April 23, 1985, and it is further

ORDERED that the U.S. Department of Commerce instruct the U.S. Customs Service to refund any estimated countervailing duties that were deposited with the U.S. Customs Service during the period January 1, 1986 through December 31, 1986 with respect to ceramic tile from Mexico manufactured by (1) Ceramica Regiomontana, S.A.; (2) Ceramica Y Pisos Industriales De Culiacan, S.A. de C.V.; and (3) Industrias Intercontinental, S.A. covered by entries that remained unliquidated at the close of business on February 2, 1995, together with interest calculated as provided in 19 U.S.C. § 1677g.

(Slip Op. 96–29)

UNITED STATES, PLAINTIFF *v.* HITACHI AMERICA, LTD. AND HITACHI, LTD., DEFENDANTS

Court No. 93–06–00373

[Plaintiff moves this Court to order the corporate defendants to produce certain witnesses at trial who are current or former employees or officers of those corporations. Those witnesses are neither United States citizens nor United States residents. *Held:* The production of the witnesses is required for a complete presentation and assessment of the facts pertaining to the controversy. Plaintiff's motion granted.]

(Dated February 1, 1996)

Frank W. Hunger, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, Department of Justice, *(Cynthia B. Schultz, James W. Poirier, Lesleyanne Kessler)* for plaintiff.

Weil, Gotshal, & Manges (Lawrence E. Elder) for defendant Hitachi America, Ltd.

Kirkland & Ellis (David G. Norrell, Eugene F. Assaf, Paul F. Brinkman, William A. Streff) for defendant Hitachi, Ltd.

OPINION

MUSGRAVE, *Judge:* Plaintiff, the U.S. Government, has moved to have this Court require the corporate defendants, Hitachi America, Ltd. and Hitachi, Ltd. (Japan), to present, at open trial, certain officers and employees, past and present, of the defendant corporations, asserting that the live testimony of such witnesses is essential to the proper evaluation of the case by the trier of fact. Plaintiff further requests that the *situs* of the trial be moved from New York City to Honolulu, Hawaii, purportedly to lessen the burden of time and expense on defendants' compliance.

Defendants contest the motion to present their officers and other representatives, and make much of the fact that this Court has no power to enforce the service of subpoenas on foreign citizens in foreign countries. But, as plaintiff points out, this argument misses the point: the Court has not been asked to issue subpoenas. What is sought is that the Court order the corporate defendants, over whom it unquestionably has jurisdiction, to produce certain witnesses. Despite the distances and expenses involved, the Court feels that this demand is not unreasonable, and, accordingly, directs defendants to present the witnesses demanded by plaintiff. Finally, the Court is impelled to give the defendants fair warning that a failure to produce the witnesses may very well result in a negative inference by the Court that such refusal reflects a concern that the live testimony of such witnesses would be detrimental to the defendants' case.[1] Conversely, the Court is aware that discovery in this case has been extensive, and is also aware that plaintiff has taken volumi-

[1] *See, e.g., Dow Chemical Co. v. S. S. Giovanella D'Amico,* 297 F. Supp. 699, 701 (S.D.N.Y. 1969) ("[W]here a witness is under the control of a party and could testify, if called, to material facts, the failure to call that witness can give rise to the strongest inference against that party which the opposing evidence permits. This is particularly true where the testimony would be important and where it can be inferred that the witness would ordinarily tend to be favorable to that party.")

nous testimony of most, if not all, of the demanded witnesses; thus, any inference attaching to the failure of the witnesses to appear may be attenuated, diluted, or disposed of by presentation of such deposition testimony.

While the Court is aware of the burden which is placed upon defendants by this order, the case before it is not of inconsequential magnitude, and while the Court has urged—and continues to urge—the parties to reach a negotiated settlement, in the absence of such a development, fairness to both parties requires as complete a presentation of and assessment of the facts pertaining to the controversy as is possible.

(Slip Op. 96–30)

LENOX COLLECTIONS, A DIVISION OF LENOX, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91–09–00651

[Judgment entered for plaintiff.]

(Dated February 2, 1996)

Ross & Hardies (Joseph Kaplan); Wasserman, Schneider & Babb (Louis Schneider and *Patrick C. Reed);* Lenox, Incorporated *(Robert O. Cohen)* for plaintiff.

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman,* Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Susan Burnett Mansfield);* United States Customs Service *(Stephen Berke),* of counsel, for defendant.

OPINION

GOLDBERG, *Judge:* In *Lenox Collections v. United States,* 19 CIT ___, Slip Op. 95–36 (Mar. 9, 1995), this Court held that material issues of fact prevented it from deciding this case by way of summary judgment. Consequently, the case is now before the Court following trial *de novo.* At trial, plaintiff Lenox Collections ("Lenox") argued that the United States Customs Service ("Customs") incorrectly classified the subject merchandise as "kitchenware * * * of porcelain," under subheadings 6911.10.50 and 6911.10.80 of the Harmonized Tariff Schedule of the United States ("HTSUS"),[1] with a duty rate of 26 percent *ad valorem.* According to Lenox, Customs should classify the subject items as "ornamental ceramic articles * * * [o]f porcelain" under subheading 6913.10.50, HTSUS, with a duty rate of 9 percent *ad valorem.* The Court exercises its jurisdiction pursuant to 28 U.S.C. § 1581(a) (1988). Upon

[1] The merchandise at issue entered the United States from March to September of 1990. Customs classified the merchandise under both subheading 6911.10.50, HTSUS and subheading 6911.10.80, HTSUS because subheading 6911.10.50 was renumbered as 6911.10.80 on or about June 1, 1990. The text of the provision, however, was not altered in any way relevant to this case.

review of the evidence and testimony presented at trial, the Court enters judgment in favor of Lenox.

BACKGROUND

The merchandise at issue is a set of twenty-four small porcelain containers called the "Spice Village." Each elaborately decorated container is shaped like a Victorian house and stands approximately three inches high. The Spice Village set comes with a hardwood rack in which it may be displayed.

DISCUSSION

A. *The Presumption of Correctness:*

Customs' classification of the subject merchandise as kitchenware enjoys a statutory presumption of correctness. 28 U.S.C. § 2639(a)(1) (1988). Lenox bears the burden of overcoming this initial presumption. *Id.*

B. *Classification of the Subject Merchandise According to Principal Use:*

Plaintiff and defendant agree that the HTSUS provisions for "kitchenware" and "ornamental ceramic articles of porcelain" are classifications controlled by use, other than actual use. *See Lenox Collections*, 19 CIT at ____, Slip Op. 95–36 at 3. According to HTSUS Additional U.S. Rule of Interpretation 1(a):

> [A] tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use * * * . *Id.*

Defendant argues that "principal use," as used in Rule of Interpretation 1(a), is defined as the "one use * * * which exceeds *all* other uses." (D's Pretrial Memorandum at 14.) Defendant further argues that the subject merchandise cannot be classified using a principal use analysis because it does not have one use that exceeds all others. *Id.* According to defendant, the merchandise has at least two significant uses, neither of which exceeds all other uses combined. *Id.*

Defendant's argument lacks merit for two reasons. First, defendant fails to recognize that Rule of Interpretation 1(a) focuses on the principal use of the class or kind of goods to which an import belongs, not the principal use of the specific import. *Group Italglass U.S.A., Inc. v. United States*, 17 CIT 1177, 1177, 839 F. Supp. 866, 867 (1993) (emphasis omitted). Second, defendant's definition of "principal use" is incorrect. Under older tariff schedules, classifications controlled by use, other than actual use, were determined according to "chief use." *Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System: Submitting Report* at 34–35 (USITC Pub. No. 1400) (June 1983). "Chief use" was defined as "that use which exceeds *all* other uses." *Id.* The concept of "chief use," however, caused administrative difficulties for Customs. *Id.* It was

therefore replaced by the concept of "principal use" when the HTSUS was enacted. *Id.* "Principal use" is defined as the use "which exceeds any other *single* use." *Id.* Consequently, the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs.

C. *Determination of the Class or Kind of Goods to Which the Merchandise Belongs:*

In order to determine the class or kind of goods to which an article belongs, the Court must examine all pertinent factors. *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377, *cert. denied*, 429 U.S. 979 (1976). These factors may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); and (5) the usage of the merchandise. *Id.*

Consequently, this case requires the Court to determine whether pertinent factors indicate that the subject merchandise is of the class or kind of goods used principally as kitchenware, or of the class or kind used principally as ornamental articles. If pertinent factors show that the subject items serve as "utensils used in the kitchen; pots, pans, etc.," this indicates that the items are of the kind used principally as kitchenware. **Webster's New World Dictionary of American English** 745 (3d college ed. 1988). On the other hand, if pertinent factors show that the items are used as "decorative" articles, this indicates that the items are of the kind principally used as ornamental articles. *Id.* at 955.

In its analysis of pertinent factors, the Court will also take relevant explanatory notes into account. *See Lynteq, Inc. v. United States*, 10 Fed. Cir. (T) ____, 976 F.2d 693, 699 (1992) (finding that explanatory notes, though not legally binding, are indicative of the interpretation of HTSUS headings). If pertinent factors show that the merchandise's usefulness is subordinate to its ornamental character, then the explanatory notes suggest that the merchandise is of the kind used principally for ornamental purposes. For example, a decorative article incorporating an incidental container that can be used as an ashtray would be classified as ornamental according to the explanatory notes. However, if pertinent factors indicate that the "decorated articles serve a useful purpose no less efficiently than their plainer counterparts," then the explanatory notes suggest that the items are of the kind principally used as kitchenware.

1. *Physical Characteristics of the Merchandise:*

The first pertinent factor that the Court considers concerns the physical characteristics of the merchandise. Although physical characteristics indicate that these containers can hold spices, this alone does not determine the proper classification of the merchandise. *See G. Heileman Brewing Co., Inc. v. United States*, 14 CIT 614, 620 (1990) (holding

that although ceramic steins could hold beer, they were chiefly used for ornamental purposes); *United States v. Baltimore and Ohio R.R. Co.*, 47 CCPA 1, 5, C.A.D. 719 (1959) (holding that although after-dinner coffee cups could hold hot beverages, they were chiefly used for ornamentation on shelves or racks). This is especially true because the physical characteristics of the merchandise indicate that these containers fail to hold spices as efficiently as their plainer counterparts. According to Lenox's expert on containers, Kenneth Holmes, plainer spice jars have a more practical design; they generally have a grip area and a shaker top, and they are usually more durable and clear.

In contrast, the Spice Village containers are shaped like Victorian houses, which are not particularly easy to grip. Each house is elaborately decorated in a pastel-colored, floral motif. Each house has a removable, hand-painted roof with protruding windows. Each house has a 24 karat "Lenox" seal on its bottom that certifies that the house is made of "fine porcelain." The set also comes with a wooden rack which is to be affixed to a wall for the perennial display of the set. In sum, the Court finds that physical characteristics suggest that although the Lenox set may hold spice, it is of the class of goods that is used principally for decorative purposes.

2. *Expectations of the Purchasers:*

The second factor that the Court examines concerns the expectations of the purchasers of the Spice Village. Upon review of the evidence, the Court finds that purchasers of the set expect to use it principally for decorative purposes.

At trial, Lisa Archambault, Director of Concept Development at Lenox, testified that when she learned that another collectible manufacturer, Franklin Mint, offered a spice jar set, she decided to develop a competitive Lenox product. Hence, she developed the Spice Village to appeal to the same purchasers that are interested in collecting the Franklin Mint set. According to Ms. Archambault, these purchasers buy the set with the expectation of collecting and displaying it, not with the expectation of using it for cooking. *See G. Heileman Brewing Co.*, 14 CIT at 620 (finding that purchasers' intent to collect certain beer steins indicated that the steins were ornamental articles).

In addition, evidence presented by defendant shows that people can purchase plainer and more efficient spice jar sets from reputable department stores for approximately $15 to $50. In contrast, people must pay approximately $360 to buy the elaborately decorated Spice Village. The higher price of the Spice Village indicates that people are willing to pay much more for a collectible and decorative set. In other words, the purchasers will pay much more for the Spice Village because they expect to use it to adorn their homes.

3. *Channels of Trade:*

The third factor that the Court examines, the channels of trade in which the merchandise moves, fails to indicate the class or kind to which the merchandise belongs. At trial, the developer of the Spice Village,

Lisa Archambault, testified that Lenox sells the set by direct mail only. Exhibits introduced by Lenox at trial indicate that decorative and collectibles items, such as porcelain thimbles, are sold by direct mail. On the other hand, exhibits introduced by defendant show that items which are principally used as kitchen utensils are also sold by direct mail.

4. *Environment of the Sale:*

The fourth factor that the Court examines is the environment in which the merchandise is advertised and displayed. Initially, the Court recognizes that advertisements describe the merchandise as both functional and decorative. For example, an ad made for television tells viewers:

> Back in 1889 when Lenox began making fine china, people took time and pride in craftsmanship. Homes were lovingly decorated with handcrafted items that held their value for generations. This Lenox heritage continues in the Lenox Spice Village. Twenty-four porcelain spice jars, each one an old fashioned miniature house, a delightful collection to display and enjoy. Every house bears the world-famous Lenox trademark, and each is decorated and painted by hand. They're airtight and washable, too* * * . Bring old fashioned charm and craftsmanship into your home with a Lenox Spice Village.

A second ad, in the form a letter written by the Director of Lenox Collections and addressed "Dear Collector," provides in part:

> I am so delighted to tell you about the new *Lenox Spice Village*—because I think it's a collection that you are going to fall in love with * * *. The set consists of 24 distinctive spice jars—each in the shape of a miniature house—with a custom-designed rack to hold the complete spice village * * *.
>
> As you may know, porcelain miniature houses have fascinated and charmed collectors for over 200 years. The very best have traditionally been decorated in lively, fanciful colors. And even when they were first made, in 1750 in England, most of these sculptured houses were designed to be *more* than ornamental. They were made to serve a specific purpose—as inkwells, money boxes, match holders, and the like.

Another printed ad provides:

> Fine porcelain spice jars * * * each a delightful miniature house, at home in a charming spice rack[.] A joy to collect, to cook with, to display[.] Yours exclusively from Lenox[.]
>
> Take a pinch of cinnamon from a Georgian townhouse. Parsley from a Queen Anne villa. And a dash of pepper from your Swiss chalet.
>
> This is *The Lenox Spice Village,* a delicious collection of spice jars—different from any you have ever seen before. Each jar is an original work of art in the tradition of the miniature houses so prized by collectors the world over.

Although the Court recognizes that ads describe the merchandise as both decorative and functional, the Court finds that the ads stress the

decorative nature of the containers. At trial, Lenox's expert in the areas of marketing, advertising, and semiotics, Elizabeth Hirschman, Ph.D., testified that the ads emphasize that the houses are unique, handcrafted, made of fine porcelain, and bear the Lenox seal. She also testified that the ads point out the long-standing tradition of collecting miniature houses like those in the Spice Village. According to Ms. Hirschman, the ads have been designed to imply that the Spice Village is a fanciful, perfect set, that a housekeeper with good taste would use to decorate her home, and then pass down to future generations. Ms. Hirschman admitted that the ads also portray the houses as being useful for holding spices, but she claimed that they do this only to help potential buyers overcome the sense of guilt or extravagance that they might otherwise feel buying these expensive items. According to Ms. Hirschman, the Spice Village is not actually as useful as Lenox has portrayed it to be in its advertising campaign. Although the Court finds Ms. Hirschman's testimony about Lenox's advertising tactics disturbing, the Court finds the testimony credible.

5. *Usage of the Merchandise:*

The final factor that the Court examines is the usage of the merchandise. Upon review, the Court finds that Lenox presented ample evidence to show that the merchandise is used principally for decorative purposes.

First, Lenox's expert in the area of market research, Mark Chudnoff, testified that the results of two surveys of purchasers of the Spice Village indicate that the merchandise is used primarily for decorative purposes. More specifically, Mr. Chudnoff testified that a May 1990 survey of 601 purchasers of the product showed that a mere 1% used the containers for storing spices and cooking only, while 28% used the containers for decorative purposes only, with no spices stored in them. The survey further showed that 40% used the items primarily for decorative display, although spices would be stored in them, whereas only 30% used the containers primarily for storing and cooking, but also for decorative display. A second survey of 500 purchasers, taken in October of 1990, similarly showed that 70% used the containers either entirely or primarily for decorative display, while only 28% used the items either entirely or primarily for cooking.

In addition, Lisa Archambault, the developer of the subject merchandise, testified that Lenox customers use the merchandise principally for decorative purposes. *See Baltimore & Ohio R.R. Co.*, 47 CCPA at 5–6 (finding importers well-qualified to testify that their customers used china cups and saucers for chiefly decorative purposes, and not for drinking). Further, Ms. Archambault testified that she hangs the empty Spice Village on her wall for decoration, while she keeps the spices jars that she uses when cooking on a turntable near her stove.

Finally, Lenox's cooking expert, Cara De Silva, testified that the merchandise should not be used for cooking. According to Ms. De Silva, these containers are loosely sealed, difficult to grip, and easily broken.

Further, according to Ms. De Silva, the set fails to provide jars for spices which people commonly use, such as chili or curry powder. Indeed, Ms. De Silva testified that she would not use these containers for holding spices or for cooking because they are less efficient than plainer jars.

CONCLUSION

In sum, the Court finds that contrary to defendant's assertions, the subject merchandise can be classified according to the principal use of the class or kind of goods to which it belongs. The Court further finds that Lenox presented ample evidence to prove that the subject merchandise falls into the class or kind of goods that is principally used for ornamental purposes. In contrast, the Court finds that defendant, who rested at the conclusion of Lenox's case-in-chief, failed to produce sufficient evidence to show that the subject merchandise falls into the class or kind of merchandise that is principally used as kitchenware. Upon due deliberation, the Court concludes that Lenox has rebutted the presumption of correctness in favor of Customs. The Court holds that the subject merchandise is properly classified as ornamental ceramic articles of porcelain under subheading 6913.10.50, HTSUS, with a duty rate of 9 percent *ad valorem*. Judgment will be entered accordingly.

Rules of the U.S. Court of International Trade

EFFECTIVE NOVEMBER 1, 1980

(AS AMENDED, [~~JANUARY 1, 1995~~] March 31, 1996)

New Rule 3.1 and Amendments to Rules 3, 5, 16, 28, 30, 31, 81, 82, and 89

November 29, 1995

Effective date:
March 31, 1996

New Rule 3.1

New Rule 3.1 is as follows:

RULE 3.1. ACTION TRANSFERRED TO THE COURT OF INTERNATIONAL TRADE FROM A BINATIONAL PANEL OR COMMITTEE PURSUANT TO 19 U.S.C. § 1516a(g)(12)(B) or (D).

(a) *Filing of Request for Transfer.*

(1) A copy of the request for transfer to the court under 19 U.S.C. § 1516a(g)(12)(B) or (D) shall be filed with the clerk of the court simultaneously with the filing of the request for transfer with the United States Secretary (as defined in 19 U.S.C. § 1516a(f)(6)).

(2) When the filing of the request for transfer is made by mail, the mailing shall be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

(b) *Notice to Interested Parties.*

On the same day as the filing of a request for transfer, the party requesting transfer shall serve a copy of the request, by certified or registered mail, return receipt requested, upon every interested party who was a party to the panel or committee review, except if the time period for filing the Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, then service shall be upon every interested party who was a party to the administrative proceeding.

(c) *Intervention of Right.*

(1) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12), any person who filed a Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 shall be deemed an intervenor in the action if otherwise entitled to intervene as of right under Rule 24 of these rules.

(2) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which a complaint or a Request for an Extraordinary Challenge Committee was filed under NAFTA Article 1904 Panel Rule 39 or NAFTA Extraordinary Challenge Committee Rule 5 and in which the time for filing a Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, anyone otherwise entitled to intervene under Rule 24 of these rules shall be

permitted to intervene. A motion to intervene shall be filed within the amount of unexpired time that remained for filing a Notice of Appearance in the panel or committee proceedings, or 10 days after the date of filing of the request for transfer, whichever is later. Any time periods in which the panel or committee proceedings were stayed shall not be counted in computing the time for filing a motion to intervene.

(d) *Documents in an Action Transferred Under 19 U.S.C. § 1516a(g)(12).*

(1) Within 30 days after the date of filing of the request for transfer, the United States Secretary shall transfer to the clerk of the court copies of all documents filed in the binational panel review or extraordinary challenge committee review and of all orders and decisions issued by the panel or committee.

(2) If the request for transfer is filed before the Record for Review under NAFTA Article 1904 Panel Rule 41 is filed, the administering authority or the International Trade Commission shall, within 40 days after the date of filing of the request for transfer, file with the clerk of the court the items described in either subdivision (a) or (b) of Rule 71 of these rules.

(3) The transfer and filing of documents under paragraphs (1) and (2) of this subdivision (d) shall be in accordance with subdivision (c) of Rule 71 of these rules. Any documents that were filed under seal pursuant to NAFTA Article 1904 Panel Rule 56 or NAFTA Extraordinary Challenge Committee Rule 30 shall be treated in the same manner as a document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested.

(e) *Pleadings.*

Notwithstanding rule 7(a) of these rules, in an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which the plaintiff has filed a complaint under NAFTA Article 1904 Panel Rule 39, the plaintiff shall not file a new complaint in the action before the court, except that

(1) if the time for amending a complaint in the panel proceedings had not expired or was stayed prior to the filing of the request for transfer, the plaintiff may file an amended complaint within the additional time that remained for filing an amended complaint in the panel proceedings, and

(2) in all actions, the plaintiff may amend the complaint within 10 days of the date of filing of the request for transfer to allege counts or requests for relief that could not have been alleged before the panel.

(f) *Additional Provisions Governing Judgment Upon an Agency Record.*

(1) Except as otherwise provided in this subdivision, the provisions of Rule 56.2 of these rules shall govern actions transferred under 19 U.S.C. § 1516a(g)(12).

(2) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which a complaint was filed under NAFTA Article 1904 Panel Rule 39, any proposed judicial protective order shall be filed within 21 days after the date of filing of the request for transfer. The procedure for filing the proposed judicial protective order shall be in accordance with Rule 56.2(a) of these rules.

(3) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12), the proposed briefing schedule filed under Rule 56.2(a) of these rules shall indicate whether briefs were filed in the panel or extraordinary challenge committee proceedings.

(A) If briefs were filed in the panel or extraordinary challenge committee proceedings, the proposed briefing schedule shall indicate whether the parties (i) agree that those briefs should be deemed the equivalent of the motion and briefs provided for in Rule 56.2(d) of these rules, (ii) see any reason for the filing of additional briefs, and (iii) agree to time periods for filing any additional briefs.

(B) If briefs were not filed in the panel or extraordinary challenge proceedings, or if the briefs were filed but the parties agree that new briefs should be filed in the court, the proposed briefing schedule shall indicate whether the parties (i) agree to the time periods set forth in Rule 56.2(d) of these rules, (ii) agree to time periods other than the periods set forth in Rule 56.2(d) of these rules, or (iii) cannot agree upon a time period. If the parties agree that new briefs should be filed, the proposed briefing schedule shall indicate the parties views as to whether any briefs originally submitted to the panel or extraordinary challenge committee should be stricken from the record.

In the event the parties cannot agree upon any of the matters covered by subparagraphs (A) and (B), the parties shall indicate the areas of disagreement and shall set forth the reasons for their respective positions.

(g) *Applicability of Other Court Rules.*
Unless a provision of this rule or an order of the court otherwise provides, the rules of this court shall govern actions transferred under 19 U.S.C. § 1516a(g)(12).

(Added Nov. 29, 1995, eff. Mar. 31, 1996.)

Amendments to Rule 3

Rule 3 is amended as follows:

RULE 3. COMMENCEMENT OF ACTION.

(a) *Commencement.* A civil action is commenced by filing [~~concurrently~~] with the clerk of the court [~~a summons and complaint except that the following civil actions are commenced by filing a summons only~~]:

(1) [~~An~~] **A summons in an** action described in 28 U.S.C. § 1581(a) or (b);[.]

(2) [~~An~~] **A summons, and within 30 days thereafter a complaint, in an** action described in 28 U.S.C. § 1581(c) to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930; **or**[.]

(3) A summons and complaint concurrently in all other actions.

(b) *Filing Fee.* * * *
(c) *Information Statement.* * * *
(d) *Amendment of Summons.* * * *
(e) *Notice to Interested Parties.* * * *
(f) *Precedence of Action.* * * *
PRACTICE COMMENT: * * *
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(As amended, Nov. 4, 1981, eff. Jan. 1, 1982; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Sept. 25, 1992, eff. Jan. 1, 1993; **Nov. 29, 1995, eff. Mar. 31, 1996.**)

Amendment to Rule 5

Rule 5 is amended as follows:

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

(a) *Service—When Required.* * * *
(b) *Service—How Made.* * * *
(c) *Service—Numerous Defendants.*
(d) *Filing—When Required.* * * *
(e) *Filing—How Made.* The filing of pleadings and other papers with the court shall be made by filing them with the clerk of the court, except that the judge to whom an action is assigned, or a matter is referred, may permit pleadings and other papers pertaining thereto to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Filing with the clerk of the court shall be made by delivery or by mailing to: The Clerk of the court, United States Court of International Trade, One Federal Plaza, New York, New York [~~10007~~] **10278–0001**; or by delivery to the clerk at places other than New York City when the papers pertain to an action being tried or heard at that place. Filing is completed when received, except that a pleading or other paper mailed by [~~registered or~~] certified **or regis-**

tered mail properly addressed to the clerk of the court, with the proper postage affixed and return receipt requested, shall be deemed filed as of the date of mailing.

(f) *Filing of Summons and Complaint by Mail.* * * *

(g) *Proof of Service.* * * *

PRACTICE COMMENT * * *

PRACTICE COMMENT * * *

PRACTICE COMMENT * * *

PRACTICE COMMENT * * *

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Nov. 29, 1995, eff. Mar. 31, 1996.)

Amendment to Rule 16

Rule 16 is amended as follows:

RULE 16. POSTASSIGNMENT CONFERENCES—SCHEDULING—MANAGEMENT.

(a) *Postassignment conferences—Objectives.* * * *

(b) *Scheduling and Planning.* Except as provided in Rule 56.2 or when the judge to whom the action is assigned finds that a scheduling order will not aid in the disposition of the action and enters an order to that effect, together with a statement of reasons and facts upon which the order is based, the judge shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;
(2) to file and hear motions; and
(3) to complete discovery.

The scheduling order also may include

(4) the date or dates for conferences before submission of the action for final disposition, and final postassignment conference, and trial or submission of a dispositive motion; and
(5) any other matters appropriate in the circumstances of the action.

The scheduling order, or the order that a scheduling order will not aid in the disposition of the action, shall issue as soon as practicable but in no event more than 90 days after the action is assigned. A schedule shall not be modified except by leave of the judge upon a showing of good cause.

(c) *Subjects to the Discussed at Postassignment Conferences.* * * *

(d) *Final Postassignment Conference.* * * *

(e) *Orders.* * * *

(f) *Sanctions.* * * *

PRACTICE COMMENT * * *

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996.)

Amendments to Rule 28

Rule 28 is amended as follows:

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN—COMMISSIONS AND LETTERS ROGATORY.

(a) *Within the United States.* * * *

(b) *In Foreign Countries.* * * *

(c) *Commissions and Letters Rogatory—How Issued—When Issued—Interrogatories—Objections to Interrogatories.*

(d) *Commissions and Letter Rogatory—To Whom Issued—Taking of Testimony—Use of Testimony—Return—Notice—Filing of Deposition.*

(1) * * *

(2) * * *

(3) * * *

(4) Upon the return of the deposition, the clerk of the court shall open and file it forthwith and give notice thereof to the parties. Any written motion to suppress such deposition, or any part thereof, shall be served within 30 days after the mailing of the notice. Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it departs from the requirements for depositions taken within the United States under the rules.

[~~(c) *Return, Notice, Filing of Deposition.* Upon the return of the deposition, the clerk of the court shall open and file it forthwith and give notice thereof to the parties. Any written notice to suppress such deposition, or any part thereof, shall be served within 30 days after the mailing of the notice. Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it departs from the requirements for depositions taken within the United States under these rules.~~]

[~~(f)~~] **(e)** *Disqualification for Interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(As amended July 28, 1988, eff. Nov. 1, 1988; **Nov. 29, 1995, eff. Mar. 31, 1996.**)

Amendments to Rule 30

Rule 30 is amended as follows:

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION.

(a) *When Depositions May Be Taken.* * * *

(b) *Notice of Examination—General Requirements—Special Notice—Non-stenographic Recording—Production of Documents and Things—Deposition of Organization—Deposition by Telephone.* * * *

(c) *Examination and Cross-Examination—Record of Examination—Oath—Objections.* * * *

(d) *Motion To terminate or Limit Examination.* * * *

(e) *Submission to Witness—Changes—Signing.* * * *

(f) *Certification and Filing by Officer—Exhibits—Copies—Notice of Filing.*

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked: "Deposition of [here insert name of witness" and, **if ordered by the court,** shall promptly file it with the clerk of the court or send it by registered or certified mail to the clerk for filing and give prompt notice of its filing to the party taking the deposition. **If filing has not been ordered by the court, the officer shall send it to the attorney who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering or deterioration.**

Documents and things produced for inspection during the examination of the witness, shall, upon request of a party, be marked for identification and annexed to the

deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) * * *

(3) The party taking the deposition shall give prompt notice of its filing, or its receipt by such party, to all other parties.

(g) *Failure to Attend or to Serve Subpoena—Expenses.* * * *

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996.)

Amendment to Rule 31

Rule 31 is amended as follows:

RULE 31. DEPOSITION UPON WRITTEN QUESTIONS.

(a) *Serving Question—Notice.* * * *

(b) *Officer to Take Responses and Prepare Record.* * * *

(c) *Notice of Filing.* When the deposition is filed, or received by the party taking it, that party shall promptly give notice thereof to all other parties.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996.)

Amendments to Rule 81

Rule 81 is amended as follows:

RULE 81. PAPERS FILED—CONFORMITY—FORM, SIZE, COPIES.

(a) *Conformity Required.* * * *

(b) *Means of Production.* * * *

(c) *Caption and Signing.* * * *

(d) *Numbering of Pages.* * * *

(e) *Designation of Originals.* * * *

(f) *Pleadings and Other Papers.* Unless otherwise provided by these rules, all papers shall be filed in duplicate, only the original of which need be signed. Pleadings and other papers shall be 8½ by 11 inches in size, with typed matter not exceeding 6½ × 9½ inches, and with type size of 11 points or larger, including type used in footnotes. Pages shall be numbered on the bottom portion thereof and bound or attached on the top margin. Typed matter shall be double spaced except footnotes, which may be single spaced, quoted material which may be indented and single spaced, and [~~except~~] titles, schedules, tables, graphs, columns of figures, and other interspersed material which are more readable in a form other than double spaced.

(g) *Status of Action.* * * *

(h) *Confidential Information.* * * *

(i) *Briefs—Trial and Pretrial Memoranda.* * * *

(j) *Content—Moving Party's Brief.* The brief of the moving party shall contain under proper headings and arranged in the following order:

(1) * * *

(2) * * *

(3) * * *

(4) * * *
(5) the questions presented for decision, including all subsidiary questions involved; when a brief is filed under Rule 56.2, the issues shall be presented in accordance with Rule 56.2(c)(1)(B), and need not be restated under this paragraph (5);
(6) * * *
(7) * * *
(8) * * *
(9) * * *

(k) *Content—Respondent's Brief.* * * *
(l) *Content—Reply Brief.* * * *
(m) *General.* * * *
PRACTICE COMMENT: * * *
PRACTICE COMMENT: * * *
PRACTICE COMMENT: Compliance with Rule 81 is encouraged because it will facilitate review of papers by the court. Pursuant to Rule 82(d), the clerk may refuse to accept any paper presented for filing because it does not comply with the procedural requirements of the rules or practice of the court. Additionally, a judge may reject nonconforming papers or take other appropriate action if it is determined that such action is warranted.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996.)

Amendment to Rule 82

Rule 82 is amended as follows:

RULE 82. CLERK'S OFFICE AND ORDERS BY THE CLERK.

(a) business Hours and Address. The office of the clerk shall be open between [~~9:00~~] 8:30 a.m. and [~~4:00~~] 5:00 p.m. on all days except Saturdays, Sundays, and legal holidays*, at:
Office of the Clerk of the Court
United States Court of International Trade
One Federal Plaza
New York, NY [~~10007~~] 10278–0001
(212) 264–2800
(b) Motions. Orders and Judgments. * * *
(c) Clerk—Definition. * * *
(d) Filing of Papers. * * *
PRACTICE COMMENT: * * *

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* * * *

(As amended, Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 29, 1995, eff. Mar. 31, 1996.)

Amendments to Rule 89

Rule 89 is amended as follows:

RULE 89. EFFECTIVE DATE.

(a) *Effective Date of Original Rules.* * * *
(b) *Effective Date of Amendments.* * * *
(c) *Effective Date of Amendments.* * * *
(d) *Effective Date of Amendments.* * * *
(e) *Effective Date of Amendments.* * * *
(f) *Effective Date of Amendments.* * * *
(g) *Effective Date of Amendments.* * * *
(h) *Effective Date of Amendments.* * * *
(i) *Effective Date of Amendments.* * * *
(j) *Effective Date of Amendments.* * * *
(k) *Effective Date of Amendments.* * * *
(l) *Effective Date of Amendments.* * * *
(m) *Effective Date of Amendments.* * * *

(n) *Effective Date of Amendment.* The Amendment to the court's Schedule of Fees adopted June 1, 1995 shall take effect on June 1, 1995. It shall govern all proceedings in actions brought after it takes effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court its application in a particular action pending when the amendment takes effect would not be feasible or would work injustice, in which event the former schedule applies.

(o) *Effective Date of Amendments.* The amendments adopted by the court on November 29, 1995 shall take effect on March 31, 1996. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Added Nov. 4, 1981, eff. Jan. 1, 1982; and amended Dec. 29, 1982 eff. Jan. 1, 1983; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Apr. 28, 1987, eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1 1991; Mar. 1, 1991, eff. Mar. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; June 1, 1995, eff. June 1, 1995; Nov. 29, 1995, eff. Mar. 31, 1996.)

AMENDMENT TO SCHEDULE OF FEES

June 1, 1995

Effective date:
June 1, 1995

SCHEDULE OF FEES

(Effective November 1, 1988, as amended [~~June 1, 1993~~] June 1, 1995)

As Provided by 28 U.S.C. § 2633(a) and the Rules of the United States Court of International Trade, the clerk of the court shall collect the [~~following~~] fees[:] set forth below. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 4 and 12 of Additional Fees. No fees under this schedule shall be charged to federal agencies or programs, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs.

Filing Fees—USCIT R. 3(b):

1.	For filing an action other than one commenced under 28 U.S.C. § 1581(d)(1)	$ 120.00
2.	For filing an action commenced under 28 U.S.C. § 1581(d)(1)	25.00
3.	For filing a complaint in an action commenced under 28 U.S.C. §§ 1581(a) or (b) prior to March 1, 1987	25.00

Attorney Admission Fees—USCIT R. 74(b)(3):

For admission of an attorney to practice, including a certificate of admission .... $ 25.00

Additional Fees—USCIT R. 80(g):

The clerk shall collect in advance from the parties for miscellaneous services as are consistent with the "Judicial Conference Schedule of Additional Fees for the United States District Courts." The additional fees that are applicable to [~~this~~] the court are as follows:

1. For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid (e.g., filing a petition to perpetuate testimony, the filing of letters rogatory or letters of request, and the registering of a judgment pursuant to 28 U.S.C. § 1963) ..... $ 20.00
2. For every search of the records of the court for each case searched. **This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access. The court has adopted guidelines consistent with those promulgated by the Judicial Conference of the United States to provide guidance in the application of this fee. The Guidelines are attached to this Schedule of Fees as Appendix I.** 15.00
3. For certification or exemplification of any document or paper, whether the certification is made directly on the document or by separate instrument ..... $ 5.00
4. For reproducing any record or paper, including paper copies made from either original documents; or **microfiche or** microfilm reproductions of the original records. **This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.** ..... .50
5. For reproduction of magnetic tape recordings, either cassette or reel-to-reel (including the cost of materials)..... 15.00
6. For transcribing a record of any proceeding by a regularly employed member of the court staff who is not entitled by statute to retain the transcript fees for his or her own account, a charge shall be made at the same rate and conditions established by the Judicial Conference for transcripts prepared and sold to parties by official court reporters:

	Original	*First Copy to Each Party*	*Each Add'l Copy to the Same Party*
Ordinary	$3.00	$.75	$.50
Expedited	4.00	.75	.50
Daily	5.00	1.00	.75
Hourly	6.00	1.00	.75

7. For each microfiche sheet of film or microfilm jacket copy of any court record, where available ..... $ 3.00
8. For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court 25.00
9. For a check paid into the court which is returned for lack of funds 25.00
10. For a duplicate certificate of admission or certificate of good standing ..... $ 5.00
11. For handling registry [~~fund~~] **funds,** a charge shall be assessed from interested earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts ..... [~~10%~~] **3%**
12. **For usage of electronic access to court data for each minute of usage. The court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. This fee shall apply to the United States. The court has adopted an advisory not consistent with that approved by the Judicial Conference of the United States clarifying the policy with respect to exemptions from this fee. The advisory note is attached to this Schedule of Fees as Appendix II.** ... **$.75**

PRACTICE COMMENT: Any reference in the Schedule of Fees and Appendices I and II that accompany the schedule pertaining to electronic access or an automated database will apply only as of the date on which the Clerk's Office has an automated database that is available to the public. As of June 1, 1995, that automated database is not available.

APPENDIX I

SEARCH FEE GUIDELINES

Introduction

The following guidelines reflect, to the [~~greatest~~] **maximum** extent possible, (1) the role of the Clerk's Office in providing information to the public about cases in the court, and (2) the limited amount or resources and personnel available in the Clerk's Office. These Guidelines attempt to strike a fair balance between these two competing concerns.

Guideline No. 1:

A search fee will no be charged for a single request for a "retrieval" of basic information, which is defined as a query for any basic information readily retrievable **through an automated database or** from **the front of** a docket sheet. A request of this nature is considered a "retrieval" and is not a "search" under the court's Schedule of Fees, unless the request is written and requires a written response.

The advent of the automated database has greatly diminished the resource strain on the Clerk's Office when retrieving basic information about a case. Basic information is defined as any information which is easily retrievable from **an automated database or from the front of** a docket sheet. Basic information which may be retrieved without a search fee may include: (1) the name of a party when the case number is provided; (2) the number of a case when the plaintiff or defendant is known; (3) the date a **summons or** complaint was filed when the case number is provided; (4) the name of a party's attorney when the case number is provided; (5) the status of the case generally when the case number is provided.

The public is encouraged to come to the court to conduct their own searches for information. Within limits, the Clerk's Office will assist those attempting to use the docket sheets **or computers placed for the public's use.**

If the request is made by telephone, and does not require a written response, no charge will be imposed if it is a single request and can be answered easily by examining a docket sheet **or through the automated database.**

Guideline No. 2:

With limited exceptions, the $15 search fee shall be charged for all written search requests.

A written request is defined as any search request made in writing which requires a written response. Because of the time and resources which must be expended in order to respond to a written request shall be considered a search which is subject to the fee, even if the request is for basic information which may be obtained from **an automated database or** a docket sheet. The combination of the search and the written response justify the imposition of the fee.

The search fee should be included with the request, and the [~~court~~] **Clerk's Office** will not process a written request until the search fee is received.

Guideline No. 3:

A search fee will be charged for any request which requires a physical search of the court's records.

A request for information which is not easily accessible from **an automated database or the front of** a docket sheet (i.e., anything other than "basic" information) and which therefore requires a *physical* search of the court's records will be considered a "search" which is properly chargeable under the court's Schedule of Fees.

Chargeable searched include, but are certainly not limited to, requests for information whether a certain person has ever been a plaintiff or defendant in any case. In this situation, where the search will take considerable time, the fee will be charged even if the requestor does not ask for a certificate of the search.

Guideline No. 4:

When an automated database is available, a computer terminal with suitable data protection shall be made available for use by the public.

When a computer terminal is available for use by the public, the court may adopt the policy set forth in Guideline No. 5 for in-person requests for basic information, i.e., the Clerk's Office may require an in-person requestor to utilize the public computer terminal rather than having a Clerk's Office employee retrieve the information.

Guideline No. [4] 5:

The clerk has general authority to refuse to conduct searches which are unreasonable or unduly burdensome.

The Clerk's Office has the responsibility of being responsive to parties in interest to cases pending in the court. However, this does not mean that either the public or government agencies has an unfettered right to make unreasonable or unduly burdensome demands upon the resources and personnel of the Clerk's Office. The clerk may (and should) refuse to conduct searches which would require a disproportionate expenditure of time and/or resources, and should encourage entities making such requests to conduct their own search of court records.

This procedure applies to federal agencies as well. Although search and copying fees are waived for federal agencies, the clerk is not required to accommodate search requests from such agencies which are unduly burdensome or time-consuming. Because of the volume of requests that often comes form federal agencies, the court may invite or encourage federal agencies (or a local representative), to come into the court to conduct their own searches and will allow them to use court copy facilities.

APPENDIX II

Advisory Note

The court, consistent with the policy of the Judicial Conference of the United States, has prescribed a fee for electronic access to court data, as set forth in the court's Schedule of Fees. The schedule provides that the court may exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. Exemptions will be granted as the exception, not the rule. The exemption language is intended to accommodate those users who might otherwise not have access to this information in electronic form. It is not intended to provide a means by which the court would exempt all users.

The court has determined that the following persons and classes of persons are exempt from the electronic public access fees: pro-se plaintiffs in trade adjustment assistance action; indigents; bankruptcy case trustees; and not-for-profit organizations.

REVISED FORMAT FOR FORM 10

January 1, 1996

Effective date:
January 1, 1996

FORM 10

UNITED STATES COURT OF INTERNATIONAL TRADE
Office of the Clerk
Admissions Office - Room 299
One Federal Plaza, New York, NY 10278-0001
Telephone: 212-264-2061

APPLICATION FOR ADMISSION TO PRACTICE

PART I - COMPLETED BY APPLICANT

I, _____, hereby apply for admission to practice before the United States Court of International Trade, and make the following statements:

1. I reside at _____
_____ Zip _____.

2. My office address and phone number are _____
_____
Zip _____, Tel: _____; or [ ] I am a member or associate of the firm of; or [ ] I am an attorney in the corporate law department of (*name, address and phone number*) _____
_____
_____ Zip _____, Tel: _____.

3. I was admitted to the bar of _____, on (*date*) _____ and have never been suspended or disbarred from practice before said court, or any court of any jurisdiction, or any department or agency of government, nor have any proceedings for such suspension or disbarment been instituted, except as follows: _____
_____
_____
_____.

4. I have enclosed my $25 admission fee.

5. If this application is not submitted upon oral motion, I enclose a certificate of a judge or of the clerk of any court specified in Rule 74 stating that I am a member of the bar of such court and am in good standing therein.

6. I have read and am familiar with the *Rules of the United States Court of International Trade*.

Signature of Applicant: _____

(Continued on Page 2)

FORM 10 Page 2

PART II - COMPLETED BY SPONSORING ATTORNEY

I, _____, a member of the bar of this Court or of the Supreme Court of the United States, move the admission to practice before this Court of _____, a member in good standing of the bar of the court mentioned above for more than _____ years last past.

I have known the applicant for _____ years and consider the applicant to be a person of good moral character and in every way well qualified to practice as a member of the Bar of this Court.

I have read the application for admission, and, to the best of my knowledge and belief, the statements therein are true.

_____
Signature of Sponsoring Attorney

_____
Address

==========

PART III - COMPLETED BY APPLICANT

I, _____, do solemnly swear (or affirm) that I will faithfully conduct myself as an attorney and counselor-at-law of this Court, uprightly and according to law, and that I will support the Constitution of the United States, so help me God.

_____
Signature of Applicant

STATE OF _____
COUNTY OF _____

Subscribed and sworn to before me the _____ day of _____, 19____.

Notary Public _____

==========

PART IV - COMPLETED BY JUDGE

Application for Admission approved on (*date*) _____, at (*place*) _____.

Signature of Judge: _____

Rev. 1/96

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